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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/696,636   | 10/29/2003  | Ahmad Akashe         | 77060               | 5534             |
| 48940  | 7590        | 04/03/2006           | EXAMINER            |                  |
| FITCH EVEN TABIN & FLANNERY<br>120 S. LASALLE STREET<br>SUITE 1600<br>CHICAGO, IL 60603-3406 |             |                      |                     | WEIER, ANTHONY J |
|  |             | ART UNIT             |                     | PAPER NUMBER     |
|  |             | 1761                 |                     |                  |

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/696,636             | AKASHE ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Anthony Weier          | 1761                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 January 2006 and 22 March 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 17-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 17-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

Claims 17-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is not clear as to what is encompassed by the terminology "natural... dairy cheese base composition" or "process dairy cheese base composition." Are these considered to be cheese analogs? What is meant by natural? All natural ingredients? Dependent claims refer to the use of high amounts of soy protein wherein the composition would not be considered to be a natural dairy cheese composition (e.g. claim 18).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17- 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodnight, Jr. et al (U.S. Patent No. 4091120) taken together with Lehnhardt et al.

Goodnight, Jr. et al discloses a soy protein material made through the preparation of a soybean slurry from soy flour wherein the concentration of soybean is as called for in the claims and wherein the pH of the slurry is adjusted as set forth in the instant claims and the resulting slurry is passed through an ultrafiltration membrane.,

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inherently polymeric, having a cutoff and employing the processing temperature as claimed. The soy protein created therein is inherently deflavored taking into account the similarity in processing between the instant invention and that of Goodnight, Jr. et al (see cols 2-4; examples).

The claims call for a natural or process dairy cheese base composition including such deflavored soy protein material. It is notoriously well known to include soy protein in dairy based cheese composition (considered both natural, due to conventional ingredients, and processed, as it is prepared in a manner similar to that of conventional processed cheeses like Velveeta) as set forth, for example, in Lenhardt et al (e.g. col. 11, lines 23-41; Examples 4 and 5). In addition, Lenhardt et al calls for such soy proteins to possess amount many characteristics, a bland flavor (e.g. col. 3, line 48). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the deflavored (i.e. bland) soy protein material in a dairy based cheese composition as a matter of preference within the known products which contain soy protein material, and more specifically, deflavored soy protein material.

As for the amount of soy protein employed in the cheese base composition, determination of same would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have arrived at same as a matter of preference depending on the particular amount of protein desired in the product, the amount of fill needed, etc.

It should be noted that the claims call for a variety of processing conditions such as the concentration of soy protein in solution during processing and the particular

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temperature employed during ultrafiltration. However, it is not seen where any differences between same and the processing of Goodnight, Jr. et al would provide for a patentably distinct product. As such, it is asserted that the product of Goodnight, Jr. et al as modified above would fall within the scope of claims reciting such processing limitations. The claims also call for the particular form of soy protein employed in the cheese (isolate, freeze-dried, etc.). It is not seen were such mid-processing forms would make for a patentable distinction in the final product which is the subject of the instant claims, and as set forth above, it is asserted that Goodnight, Jr. et al as modified above would fall within the scope of claims regardless of the mid-processing format of protein employed.

***Response to Arguments***

Applicant's arguments filed 1/20/06 and 3/22/06 (interview summary) have been fully considered and found persuasive. However, same are moot in view of the new grounds of rejection.

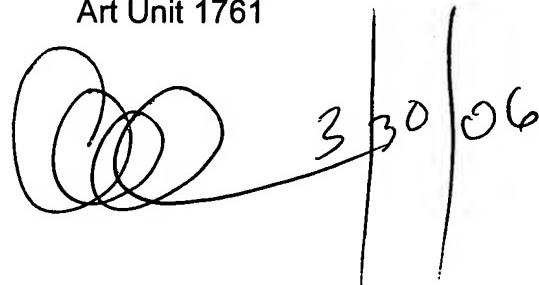
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
March 30, 2006



A handwritten signature of "Anthony Weier" is written over three overlapping circles. To the right of the signature is a vertical line with the numbers "3", "3", "0", and "0" stacked vertically, with a diagonal line extending from the bottom of the "3" towards the signature.